IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1967 OF 2006

Kamalabai Shripatrao Majnalkar,
since deceased through heirs
Bandopant @ Bonderao Shripatrao Majnalkar
& Ors. ..Petitioners.

Vs.

Saraswatibai Ganpatrao Rashingar & Ors. ..Respondents.

...

Mr. G.N. Salunke for the Petitioners.
Mr. R.S. Apte with Mr. A.A. Garge for the Respondents.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

13th June, 2006.

P.C. :

1. The Trial Court, in a suit which was instituted in 1980 passed a decree for eviction under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

2. Section 13(1)(l) contemplates a ground for eviction where the tenant has after coming into operation of the Act built, acquired vacant possession of or has been allotted a suitable residence. The decree for eviction has been confirmed in appeal by the Additional District Judge. Now, admittedly, the tenant owns

a house property, CTS 434 E which was in the occupation of tenants. The tenant's son who deposed in evidence admitted that the house property consisted of 18 rooms. The assessment record was produced before the Trial Court in evidence. From the evidence it emerged that from time to time several tenants in the house property owned by the Petitioner had vacated the rooms in their possession from the year 1975-76 and that these tenements were thereafter let out by the Petitioner once again. The finding of the First Appellate Court is that the evidence shows that after receiving vacant possession, the Petitioner had successively inducted fresh tenants.

3. In order to consider as to whether a case for the invocation of the supervisory jurisdiction has been made out, it would be sufficient to advert to two passages from the deposition of P.W. 1 Bandopant Shripatrao Majnalkar, the son of the original tenant Kamalabai. He deposed as follows in the course of his cross examination :

> “It is true to say that one Anusaya Kambale is inducted as a tenant in one room about 10-12 years back and that one Shamasuddin Jamadar was inducted as a tenant in

> two rooms three years after Anusaya Kambale has been inducted. And that Vasantrao Nibalkar, Nabilal Sayed, Gadappa Sayed were inducted four years after Jamadar was inducted, and that Nibalkar is in occupation of two rooms and Nabilal and Gadappa in one room each and that three rooms out of the said house, were kept vacant and which admeasures 14' x '9' and 14' x 10'. It is not true to say that the vacant rooms are let to say that the vacant rooms are let to the students on term basis since 1978-79. It is true to say that we constructed one room in 1975-76 and the same was let to one Gavaskar Tailor on the very year and that in 1975-76 we let out one room each to Bapusaheb Redekar, Dattatraya Jadhav and two rooms to Moulla Saheb Maner and that all these rooms admeasure 11' x 10' each."

4. The witness further made a clear cut admission of the fact that in 1982-83 and again in 1983-84 several rooms had fallen vacant which came to be once again let out. In so far as the question of suitability is concerned, the following admissions emerged in the course of the cross examination:

> "It is true to say that the house purchased by the deft. is on the main road which paralleled to station road, it is three storied building. It is true to say that the tenants were inducted on the first floor of our house for the first time in 1982-83. There are facilities of electricity, water and latrine in that house. It is true to say that the K. M. T. Bus stop is at a distance of about 100 ft. from our house. The Bus Stop is on the station road, and on the southern side of station road there is Shahupuri Trading Centre. It is true to say that the vegetable market is at a

> distance of 100 ft. to 150 ft. from Shahupuri Trading Centre. The station road runs east west. It is true to say that about 100 and 150 K. M. T. buses ply on the station road every day having different routes and that equal number of K. M. T. buses ply back on the same route and that all the buses have got a stop near Usha Talkies and that station road is about 50 ft. in width. And that in between our house and station road there is a line of shop premises and residential houses running east west, and that the distance between out house and station road is about 35 to 40 ft. and that our house is having all the facilities & amenities required for comfortable staying..."

5. On this state of the record, the finding that has been recorded by the First Appellate Court is that the Petitioner had in fact acquired alternative residential accommodation and that the alternative accommodation was both suitable and spacious. The finding in regard to suitability is contained in paragraph 14 of the impugned judgment.

6. Two submissions have been urged on behalf of the petitioner. The first is that the house property was acquired by the tenant in 1936 whereas under Section 13(1)(l) the acquisition has to be after the coming into operation of the Act. There is no merit in this submission. Section 13(1)(l) requires that after coming into operation of the Act the tenant should have acquired vacant

possession of a suitable residence. In the present case, the evidence has clearly demonstrated that after 1974-75, the tenant had indeed acquired vacant possession successively of several rooms. Even a bare reading of the evidence which has been extracted above would show that the tenant had thus acquired possession of at least seven rooms, if not more. However, these rooms came to be let out to tenants, once again by the Petitioner. The cause of action for establishing a ground for eviction under Section 13(1)(l) arises once the tenant had acquired vacant possession of a suitable residence. In the present case, the requirements of Section 13(1)(l) have been fulfilled, since the acquisition of vacant possession is clearly after the date of the enforcement of the Act and in fact proximate in time prior to the institution of the suit. The second submission is that there is no finding in regard to suitability. As a matter of fact, the submission overlooks the clear finding in paragraph 14 of the judgment of the First Appellate Court. That apart, this Court is exercising its supervisory jurisdiction under Article 227. There is ample evidence on the record which reflects the clear cut admission of the Petitioner that the house property which is owned by the Petitioner has all amenities including electricity, water and toilet; that it is well

connected for transport and that the house has all the facilities and amenities required for comfortable residence.

7. Having regard to all these facts and circumstances, the concurrent finding by both the Courts below cannot be said to suffer from any error apparent or any infirmity of the nature that would require the invocation of the jurisdiction under Article 227. There is no merit in the Petition which is accordingly dismissed. However, in order to enable the Petitioner to espouse his remedies in appeal against this judgment and order, there shall be a direction to the effect that the decree for eviction shall not be executed for a period of four weeks from today, subject to the filing of the usual undertaking within a period of two weeks from today.